Supreme Court, U.S.
FILED

97 1215 JAN 2 1 1998

OFFICE OF THE CLERK

No. ~~97-7249~~

In The
Supreme Court of the United States
October Term, 1997

NOEL FUENTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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38 pp

QUESTION PRESENTED FOR REVIEW

MAY A POLICE OFFICER QUESTION A SUBJECT REGARDING HIS MODE OF TRANSPORTATION PURSUANT TO THE ROUTINE BOOKING EXCEPTION WHEN THIS INFORMATION IS POTENTIALLY TESTIMONIAL AND IS NOT NECESSARY TO VERIFY THE IDENTITY OF THE SUBJECT?

LIST OF PARTIES

Pursuant to Supreme Court Rule 14.1(b), the following is a list of all parties to the proceedings:

AFPD, Peter Birch

Noel Fuentes

Hon. Daniel T.K. Hurley

AUSA Thomas O'Malley

Joseph S. Rosenbaum, Esq.

AUSA Kathleen Salyer

Robert L. Sussman, Esq.

Hon. Ann Vitunac, Magistrate Judge

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The questioning by the Deputy Marshal exceeded the bounds of the routine booking exception and was designed to elicit testimony, in direct conflict with the rulings of this Court, the Ninth Circuit Court of Appeals, and the Tenth Circuit Court of Appeals

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In The
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NOEL FUENTES,

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v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Noel Fuentes respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit rendered

and entered in case number 95-5489 in that court on October 23, 1997, *United States v. Noel Fuentes*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgement and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1)

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was entered on October 23, 1997. This petition is timely filed pursuant to Sup. Ct. R. 13.1. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and Sup. Ct.R. 10.1. The District Court had jurisdiction because petitioner was charged with violating federal criminal laws. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. §1291, which provides that Courts of Appeals shall have final jurisdiction for all final decisions of the United States District Courts.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner intends to rely upon the Self-Incrimination Clause of the Fifth Amendment of the United States Constitution: "No person shall be...compelled in any criminal case to be a witness against himself..."

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the Lower Court

On March 1, 1995, a federal grand jury charged Noel Fuentes with possession of a firearm by a convicted felon in violation of 18 U.S.C. §922(g). After a jury trial, Mr. Fuentes was found guilty as charged. The District Court sentenced Mr. Fuentes to a term of 110 months imprisonment, to be followed by a term of three years supervised release.

Mr. Fuentes appealed to the Eleventh Circuit Court of Appeals, arguing that the District Court erred in denying his motion to suppress statements made after his arrest. The Court, however, affirmed his conviction, *per curiam*, without opinion.

STATEMENT OF THE FACTS

On February 7, 1995, Deputy Marshal Max Medina was requested to report to the United States Probation Office in order to arrest the petitioner on an outstanding warrant for violation of probation. (Transcript of the motion to suppress held on June 28, 1995, p. 6) Before he arrived at the probation office, Mr. Medina was provided with an "absconder sheet", which provided information regarding the petitioner. (Suppress, p.6) This form featured information about the defendant's vehicle, including the license plate number of his car – 52BID. (Suppress, p.6-7)

When Mr. Medina arrived at the Probation Office, the petitioner was already there. (Suppress, p.7). Mr. Medina informed the petitioner of the probation violation and ordered him to empty his pockets. (Suppress, p.7) The petitioner complied and removed several items from his pockets, including car keys. (Suppress, p.8)

Mr. Medina then asked the petitioner where his car was. (Suppress, p.8) Although the petitioner was not free to leave, Mr. Medina had not yet read the him his rights pursuant to *Miranda v.*

Arizona 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (Suppress, p.19). Instead, Mr. Medina explained that he regularly asked this question solely to secure the petitioner's vehicle for storage. (Suppress, p.8-9) Mr. Medina stated that he usually allows a detainee to call somebody he knows who can retrieve the vehicle. (Suppress, p.9)

The petitioner responded that he did not drive to the probation office. (Suppress, p.11) Upon hearing this, Mr. Medina further questioned the petitioner about how he arrived at the probation office. (Suppress, p.11) Mr. Medina conceded that he asked this question at least in part to test the veracity of the petitioner's original answer. (Suppress, p.11) The petitioner answered that his brother had dropped him off. (Suppress, p.11)

Mr. Medina then took the petitioner to the Federal Courthouse in Fort Lauderdale, Florida, where the petitioner was brought before a magistrate and granted bond. (Suppress, p.12) After the hearing, Mr. Medina brought the petitioner back to his office in order to ask him routine booking questions. (Suppress,

p.12) This process included photographs, fingerprinting, and receiving information about the individual. (Suppress, p.13) Mr. Medina also asked the petitioner about his relatives, including their addresses and telephone numbers. (Suppress, p.13) During this period, the petitioner originally told Mr. Medina that his girlfriend's last name was "Smith", but then admitted that her name was "Hooks". (Suppress, p.14)

The petitioner then requested permission to call his girlfriend so she could pick him up. (Suppress, p.14) Mr. Medina offered to dial the phone for the petitioner, and learned then that the phone number the petitioner gave for Ms. Hooks was inaccurate. (Suppress, p.15) After Mr. Medina dialed the phone, he heard a male voice answer. (Suppress, p.15) Mr. Medina then overheard the petitioner say in an extremely urgent manner that the person on the phone should pick up the petitioner's car because he had something inside. (Suppress, p.15) The petitioner said nothing to the person about receiving a ride home from the Marshal's office. (Suppress, p.16) At this point, Mr. Medina confronted the

petitioner and told him that he was not being straightforward because he had lied about the reason he had made this call. (Suppress, p.16) In response to this, the petitioner admitted that he had actually called his brother. (Suppress, p.16)

Meanwhile, Mr. Medina learned that the petitioner's probation officer, Warren Metcalf, was attempting to secure a search warrant for the petitioner's car. (Suppress, p. 17). Mr. Medina related the petitioner's phone conversation to Mr. Metcalf (Suppress, p.17). The probation officer eventually secured a search warrant – based in part on the misrepresentation the petitioner had made about driving to the probation office - and discovered the firearm that formed the basis of the charges against the petitioner.

Before trial, the petitioner moved to suppress his statements to Mr. Medina. The magistrate judge found that the statements were taken while the defendant was in custody and without the benefit of his *Miranda* warnings. However, the magistrate declined to suppress the statements because the questions were designed for

administrative purposes, and not for a criminal interrogation. The District Court adopted this ruling.

At trial, the government was unable to produce direct evidence linking the petitioner to the firearm found in his vehicle. Therefore, the government relied heavily upon the actions of the petitioner during the arrest process to prove knowledge. Specifically, the government claimed that the only reason the petitioner lied about the car was because he knew there was a firearm inside.

The jury found the petitioner guilty as charged. The Eleventh Circuit Court of Appeals affirmed the conviction.

ARGUMENT

THE QUESTIONING BY THE DEPUTY MARSHAL EXCEEDED THE BOUNDS OF THE ROUTINE BOOKING EXCEPTION AND WAS DESIGNED TO ELICIT TESTIMONY, IN DIRECT CONFLICT WITH THE RULINGS OF THIS COURT, THE NINTH CIRCUIT COURT OF APPEALS, AND THE TENTH CIRCUIT COURT OF APPEALS

The Fifth Amendment of the United States Constitution provides in part that "[n]o person...shall be compelled in any

criminal case to be a witness against himself." U.S. Const. Amend. V. Accordingly, subjects of custodial interrogation must be warned of their privilege against self-incrimination, or else their statements may not be submitted into evidence. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). However, this privilege is restricted only to testimonial or communicative statements. *Schmerber v. California*, 384 U.S. 757, 761, 86 S.Ct. 1826, 1830, 16 L.Ed.2d 908 (1966); *Pennsylvania v. Muniz*, 496 U.S. 582, 589, 110 S.Ct. 2638, 2643, 110 L.Ed.2d 528 (1990).

In *Muniz*, this Court applied this rule to "routine booking questions." 496 U.S. at 590, 110 S.Ct. at 2644. The petitioner in that case was arrested for driving while under the influence of alcohol. At the police station, the police asked him "his name, address, height, weight, eye color, date of birth, current age, and the date of his sixth birthday." Id. The petitioner subsequently moved to suppress all of this information. 496 U.S. at 587, 110 S.Ct. at 2643.

This Court first considered the definition of "testimony", and concluded:

> Whatever else it may include, therefore, the definition of 'testimonial' evidence articulated in *Doe* must encompass all responses to questions that, if asked of a sworn suspect during a criminal trial, could place the suspect in the 'cruel trilemma' [of self-accusation, perjury, or contempt]...Whenever a suspect is asked for a response requiring him to communicate an express or implied assertion of fact or belief, the suspect confronts the 'trilemma' of truth, falsity, or silence, and hence the response (whether based on truth or falsity) contains a custodial component.

Muniz, 496 U.S. at 597, 110 S.Ct. at 2648, *citing Doe v. United States*, 487 U.S. 201, 213, 108 S.Ct. 2341, 2349, 101 L.Ed.2d 184 (1988)

Pursuant to this definition, this Court concluded that the question regarding the date of the petitioner's sixth birthday – which the petitioner was unable to answer at the time - was testimonial and required *Miranda* warnings:

> When Officer Hosterman asked Muniz if he knew the date of his sixth birthday and Muniz, for whatever reason, could not remember or calculate that date, he was confronted with the trilemma. By hypothesis, the inherently coercive environment

> created by the custodial interrogation precluded the option of remaining silent...Muniz was left with the choice of incriminating himself by admitting that he did not then know the date of his sixth birthday, or answering untruthfully by reporting a date that he did not then believe to be accurate (an incorrect guess would be incriminating as well as untruthful).

Muniz, 486 U.S. at 598-599, 110 S.Ct. at 2649. This Court emphasized that this evidence was testimonial even if the Commonwealth of Pennsylvania had no interest in the correct answer – "the Commonwealth may not have cared about the correct answer, but it cared about Muniz' answer. The incriminating inference stems from the then-existing contents of Muniz' mind as evidenced by his knowledge at that time." Id. (n.13)

On the contrary, this Court determined that the questions regarding the name, address, height, etc. of the petitioner did not require *Miranda* warnings because they fell within a "routine booking questions" exception. *Muniz*, 496 U.S. at 601, 110 S.Ct. at 2650. Specifically, these questions fell outside the ambit of *Miranda* because they were required only for record-keeping and administrative purposes. Id. However, this Court specifically

noted that not all questions in this context would necessarily fall under this exception – "Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are designed to elicit incriminating admissions." Id. (n.14). *See also Rhode Island v. Innis,* 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-1690, 64 L.Ed.2d 297 (1980) (express questioning includes "any words or actions on the part of the police...that the police should have known are reasonably likely to elicit an incriminating response from the subject. The latter portion of this definition focuses primarily on the perceptions of the suspect.")

Since this Court's ruling in *Muniz*, several United States Circuit Courts have reaffirmed the rule that "when a police officer has reason to believe that a suspect's answer may incriminate him...even routine questions may amount to interrogation." *United States v. Henley*, 984 F.2d 1040, 1042 (9th Cir. 1993). *See also United States v. Parra*, 2 F.3d 1058 (10th Cir.), *cert. denied* 510 U.S. 1026, 114 S.Ct. 639, 126 L.Ed.2d 597 (1993); *United States v. Brown*, 101 F.3d 1272 (8th Cir. 1996).

In *Henley*, the police had reason to believe that a 1974 Plymouth Duster had been used in a bank robbery. 984 F.2d at 1041. The police approached the defendant and asked him if he was the owned of this car. This question was designed only to ascertain that the defendant had standing to consent to a search. The defendant said that he was the owner, and then consented to the search. The police found evidence that linked the defendant to another robbery. Id.

The defendant moved to suppress the statements he made to the police and the items that were found as a result of that statement. Id., at 1402. The District Court denied the defendant's motion, but the Ninth Circuit Court of Appeals reversed that ruling. Id., at 1404.

First, the Ninth Circuit noted that although routine questions do not normally involve the psychological intimidation that *Miranda* is designed to preclude, there are situations where a police officer has reason to believe that the answers to these seemingly innocuous questions will in fact elicit incriminating answers. Id.

For example, a question about a detainee's place of birth takes on new meaning if the officer is an Immigration and Naturalization Service ("INS") agent who suspects that the individual is an illegal alien. Id., *citing United States v. Gonzalez-Sandoval*, 894 F.2d 1043 (9th Cir. 1990). Similarly, a question regarding a subject's address is potentially incriminating if the officer is already aware that drugs had been found in that residence. *Henley*, 984 F.2d at 1043, *citing United States v. Disla*, 805 F.2d 1340 (9th Cir. 1986).

Therefore, the question in this case – although otherwise inoffensive –required *Miranda* warnings because "an officer investigating a bank robbery who has the getaway car but isn't sure who owns it should well know that asking a suspect if he's the owner of the vehicle is reasonably likely to elicit an incriminating answer." *Henley*, 984 F.2d at 1043. This statement could not be deemed voluntary absent a reading of the *Miranda* warnings. Id. Moreover, the officer's legitimate motivation to ask the question – to obtain consent to search – did not overcome the harm done by asking the defendant these questions absent the proper warnings.

Id., at 1043-1044. Finally, because this statement led to the discovery of all the evidence used against the defendant, this error could not be considered harmless. Id., at 1044.

Similarly, in *Parra*, the police confronted the defendant with a "routine" question which, in that context, could reasonably elicit testimony. 2 F.3d at 1068. In *Parra*, the defendant gave a false name to an INS Officer, but admitted that he had entered the country illegally. The officer turned the defendant over to the custody of the local jail, and then attempted to research his immigration history. After finding nothing under the false name, the INS agent discovered the defendant's real name and learned that the defendant had previously been deported. Meanwhile, the defendant posted a bond in the local jail and prepared to leave. The officer intercepted the defendant in the booking area and, "Hoping to get Soleto to admit his real name, Agent Gotshall asked Soleto, 'How is it going, Jose?'" Id., at 1067. The trap worked, and the defendant admitted his real name. Id.

The Tenth Circuit concluded that this question violated the defendant's *Miranda* rights. Id., at 1068. First, the Court noted that the routine booking exception exists primarily because those questions "do not normally elicit incriminating responses." Id. However, "where questions regarding normally routine information are designed to elicit incriminating information, the question constitutes interrogation subject to the strictures of *Miranda*." Id., *citing Muniz*, 496 U.S. at 602 (n.14), 110 S.Ct. at 2650. In this case, the officer's purpose was not to obtain the information for booking purposes, but was instead to link the defendant to his "incriminating immigration file". Therefore, the District Court should have granted the defendant's motion to suppress those statements. Id.

In the present case, by failing to address the District Court's improper conclusions, the Eleventh Circuit has condoned a ruling that stands in direct opposition to the rulings of this Court, the Ninth Circuit, and the Tenth Circuit. In this case, without the benefit of reading the petitioner his *Miranda* rights, the deputy

Marshal questioned him about how he drove to the probation office. This question, in and of itself, clearly oversteps the bounds of the booking exception because such information is by no means necessary to "complete booking or pretrial services." *Muniz*, 496 U.S. at 601, 110 S.Ct. at 2650. On the contrary, it opens the subject to further questioning that could potentially prove harmful; and it creates an avenue by which the exception may eventually swallow the rule.

Even worse, the deputy Marshal further questioned the petitioner about how he arrived at the probation office, admittedly with the intention of catching him in a lie. Subsequently, after the petitioner lied about the purpose of his phone call, the deputy Marshal again confronted him, clearly with an expectation of eliciting a concession or a false story. There is no way that this information had any relevance to the petitioner's biographical data. Instead, these questions served only to elicit testimony from the petitioner that the Marshal knew could prove incriminating. Eventually, these statements served as the mainstay of the

prosecution's case against the petitioner, for otherwise there was no direct evidence to link the petitioner to the firearm found in his car.

Therefore, this Court should rectify the improper and inconsistent state of the law that presently exists in the Eleventh Circuit, and should more clearly define the parameters of the booking exception.

CONCLUSION

Based on the foregoing petition, it is respectfully requested that the Court grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully Submitted,

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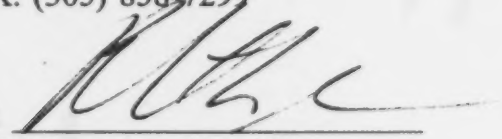
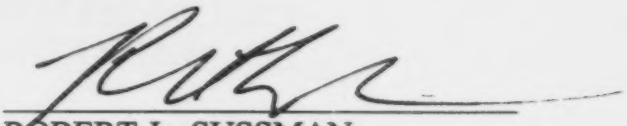
BY: 
ROBERT L. SUSSMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief was mailed this 20th day of January, 1998, to: The Solicitor General, United States Department of Justice, 10th & Constitution Avenues, N.W., Washington, D.C. 20530; United States Department of Justice, Criminal Division, Appellate Section, P.O. Box 899, Ben Franklin Station, Washington, D.C. 20044-0899; and Kathleen Salyer, Assistant United States Attorney, 99 NE 4th Street, Miami, Florida 33132.



ROBERT L. SUSSMAN

APPENDIX A

IN THE UNITED STATE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 95-5489
D.C. Docket No. 95-6030-CR-DTKH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NOEL FUENTES,

Defendant - Appellant.

_____/

Appeal from the United States District Court
for the Southern District of Florida

October 23, 1997

Before TJOFLAT and BIRCH, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

AFFIRMED. See 11th Cir. R.36-1[1]

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[1] 11th Cir. R. 36-1 provides:
When the Court determines that any of the following circumstances exist:
a) judgment of the district court is based on findings of fact that are not clearly
(continued...)

[1](...continued)

erroneous;

b) the evidence in support of a jury verdict is sufficient;

c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

e) judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 95-6030-CR-HURLEY
MAGISTRATE JUDGE VITUNAC

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOEL FUENTES,

Defendant.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on general order of reference from United States District Court Judge Daniel T.K. Hurley for disposition and/or a report and recommendation of all pending pretrial criminal motions. Before the Court is defendant's Motion to Suppress Evidence [DE 19]. This Court has reviewed defendant's motion, the Government's Response to the motion, the Government's Supplemental Response to the Motion to Suppress, and this Court had conducted an evidentiary hearing on defendant's motion. The matter is now ripe for review.

DEFENDANT'S WRITTEN MOTION

The defendant alleges that on February 7, 1995, Warren Metcalfe, U.S. Probation Officer, secured a search warrant from Magistrate Judge Snow to search a Toyota Celica vehicle. Metcalfe executed a search based upon that warrant.

The defendant asserts that the search warrant authorized Metcalfe and any other authorized person to search the vehicle for evidence of theft of the motor vehicle. The search warrant expressly authorized obtaining the vehicles VIN number. The defendant contends that the execution of the search warrant was constitutionally defective because the search was not limited to the particulars mentioned in the search warrant. The defendant contends that a general exploratory search was conducted and during such search, a firearm under the driver's seat was seized. The defendant contends in his memorandum of law that the firearm was not evidence of any crime and certainly not the crime of vehicle theft and therefore the seizure was unlawful.

GOVERNMENT'S WRITTEN RESPONSE

On February 7, 1995, the defendant FUENTES was arrested at the U.S. Probation Office in Hollywood, Florida. An arrest warrant had been issued by U.S. District Court Judge Edward B. Davis for violation of supervised release. A set of car keys was found in FUENTES' possession following his arrest. FUENTES, however, told officers that he had been dropped off at the probation office by his brother and that he did not drive to the probation office. FUENTES' probation officer, however, had observed the defendant drive to parking lot of the probation office that day. The probation officer believed that FUENTES lied about driving the car because it was probably stolen. The probation officer had previously mistakenly copied down the tag number from the car and had learned that the number he copied down on the car was not registered to the defendant. Probation Officer Metcalfe procured a search warrant from Judge Snow. The search authorized the search for fruits of a crime, that is, evidence relating to the theft of a motor vehicle, including the VIN number. The car was searched and a loaded gun and drugs were seized from the car.

The government first argues that the defendant had no expectation of privacy in his automobile because he abandoned the automobile when he disclaimed any knowledge or interest in the car. Secondly, the government argues that the search of the motor vehicle was not limited by the search warrant and that the probation officer had the right to search the contents until he discovered to whom the car was registered. Thirdly, the government argues that suppression would not lie because of the inevitable discovery of the evidence while preparing an inventory of the items located in the car.

THE EVIDENTIARY HEARING

United States Probation Officer Terry Graves testified. The defendant came under the supervision of the Federal Probation Department in October of 1994. U.S.P.O. Metcalfe placed the defendant on an electronic monitor after a positive drug test. On February 7, 1995, Graves saw FUENTES pull up in a car at the Hollywood office of the Federal Probation Department. Graves and Metcalfe knew there was a warrant for FUENTES' arrest, so the U.S. Marshal Service was called to come and arrest the defendant. When the two U.S. Marshals arrived, FUENTES was told by the Marshals that he was under arrest. The Marshals asked FUENTES if he drove to the probation office. This question was asked based on the fact that FUENTES had car keys in his pockets when he was searched by the Marshals. FUENTES stated to the Marshal that he had not driven to the probation office, that his brother had dropped him off there. The defendant was not advised of his rights prior to that question by the Marshal. The Marshal had no prior knowledge whatsoever of the defendant FUENTES and the Marshal testified that he asked FUENTES if he had driven to the probation department so that he, the Marshal, could take whatever steps were neccssary to reasonably secure FUENTES' car for liability purposes. When FUENTES stated that he had not

driven to the office, the Marshal left with the defendant in custody. No further questioning or investigation was done by the Marshal.

Once the defendant had left in the Marshal's custody, Graves explained to Metcalfe that he had seen the defendant drive up in a car and had just heard the defendant tell the Marshal that his brother had dropped him off at the probation office. The probation officers went downstairs and looked at the car driven by the defendant. Because of the dark tint on the windows of the car, the probation officers were unable to read the VIN number through the windshield of the car.

Metcalfe suspected that the car was stolen because he had previously run the tag on the car and the tag number belonged to someone other than the defendant. Metcalfe assumed that the reason that the defendant denied driving the car to the probation office is because it was not registered to him and was probably stolen. Metcalfe procured a search warrant from Magistrate Judge Snow based on that information. Metcalfe then obtained the assistance of fellow probation officers and police officer Jason Thomas of the City of Hollywood Police Department to assist him in executing the search warrant on the car. During the execution of the search the driver's car door was opened in an attempt to see the VIN number. Officers were still unable to read the VIN number with the car door open because of the dark tint and because they were now attempting to read the VIN number backwards from the inside of the car.

The probation officers found a briefcase on the back seat of the car, opened the briefcase and inside found small amounts of drugs and paraphernalia. Graves reached under the driver's seat of the car and found the gun in question. In the glove box was a small blue plastic folder with an insurance card registered to NOEL FUENTES. In the console between the seats was a wallet with a New York I.D. card with the name Louis Vasquez and a Dade County Corrections Officer's badge. Included in the papers found

within the car was an application for title certificate stapled to an Expressway Auto Tag Agency piece of paper. There was an insurance card in the glove box. The application for the title certificate was in the name NOEL FUENTES.

DISCUSSION

Defendant moves to suppress the gun found in the car for the reasons stated in his written motion. The defendant contends that the probation officers exceeded the scope of the warrant by searching under the front seat of the car. Defendant contends that it was not reasonable for the probation officer to look under the front seat of the car for evidence relating to auto theft. Orally, during the motion to suppress, the defendant additionally moved to suppress his statement to the U.S. Marshal that he did not drive to the probation office. The defendant contends that the questioning of him was done while he was "in custody" and without the benefit of having had his Miranda rights read to him. The government contends that the officers had a right to search the car in its entirety and that the statements made by the defendant to the U.S Marshal were not the result of interrogation and therefore, not subject to Miranda.

This Court finds the search of defendant FUENTES' vehicle pursuant to the warrant to have been objectively reasonable under the circumstances. The probation officers were entitled to look for evidence that the vehicle was stolen. The magistrate judge initialed a change to the warrant which stated, "including the vehicle identification number." The probation officers executing the search warrant were not limited in their search to the vehicle identification number itself. The warrant allowed them to look for evidence that the vehicle was stolen.[2] The defendant contends that the search of

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[2] The defendant did not challenge the warrant on being a general warrant nor did he challenge the warrant on the grounds of (continued...)

the area under the front seat of the car exceeded the scope of the warrant. However, the police officer testified at the evidentiary hearing that vehicle identification numbers are hidden throughout automobiles and that their exact locations are not known even by the police. Thus, it was objectively reasonable for the probation officer to search the entire car for the vehicle identification number or any other evidence of vehicle theft. Prior to the discovery of the gun under the front seat of the car, the probation officer opened a briefcase on the back seat and found drugs in the car. This finding of drugs in the briefcase would allow the officers to seize the vehicle itself and to inventory its contents pursuant to that seizure. The probation officer need not resort to inventory for the justification in the finding of the gun however. "A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search." "U.S. v. Johns, 469 U.S. 478, 483, 105 S.Ct. 881, 885, quoting U.S. v. Ross, 456 U.S. 798, 821, 802 S.Ct. 2157 (1982)." U.S. v. Gerber, 994 F.2d 1556 (11th Cir. 1993).

In Gerber, the F.B.I. procured a search warrant for a bank robber's car because the car was evidence of the bank robbery based on the eye witness' identification. Agents searched under the hood of the car and found a pistol, gloves, ski mask and an ammunition box. Though Gerber did not contend that the evidence found under the hood of the car was illegally seized as exceeding the scope of the warrant, the 11th Circuit quoted the following language from Ross:

> When a legitimate search is underway, and when its purpose and its limits have been precisely defined, nice distinctions between glove compartments, upholstered seats, trunks and wrapped packages in

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[2](...continued)
being vague.

the case of a vehicle must give way to the interest in the prompt and efficient completion of the task at hand. Ross at 821.

The Gerber court cites to U.S. v. Miranda, 426 F.2d 283 (9th Cir. 1970) *per curium* where marijuana found under the hood of a car was admissible although it was "inconceivable" that the border patrolman was searching for illegal aliens when there were only inches between the radiator and the top of the hood.

This Court finds that the warrant issued by Magistrate Judge Snow for the search of the defendant's vehicle allowed the probation officers to search the entire vehicle for "evidence of vehicle theft, including the VIN number" and that the search as done by the probation officers was objectively reasonable under the circumstances.

Lastly, the defendant has orally moved to suppress his statements to the arresting U.S. Marshal at the probation office. Defendant moves to suppress his answer to the Marshal's questions, "Where is your car?" to which the defendant responded, "My brother drive me here."

This Court specifically finds that the defendant was not advised of his Miranda rights, however, the questioning by the U.S. Marshal was for the purpose of determining the security of the defendant's property and was a routine question asked by the U.S. Marshal Service to prevent liability for loss of a defendant's property. This Court finds that the question was not designed to further a criminal investigation and was, therefor, not interrogation. The Marshal arresting defendant FUENTES had never met FUENTES before, knew nothing about the violation pending against the defendant, and had not conversed with the probation officer about the fact that the defendant had driven to the probation office prior to the arrest being made. The answer given by the defendant, even if incriminating, was not subject to the dictates of

Miranda. See U.S. ex rel. Hines v. LaVallee, 521 F.2d 1109 (2nd Cir. 1975), U.S. v. Glen-Archila, 677 F.2d 809 (11th Cir. 1982), and U.S. v. Simms, 719 F.2d 375 (11th Cir. 1983).

For the reasons stated above, this Court **RECOMMENDS** to the District Court that each of the defendant's Motion to Suppress be **DENIED** in their entirety.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the parties shall serve and file written objections, if any, with the Honorable Daniel T.K. Hurley, United States District Court Judge within ten (10) days from the date of this report and recommendation.

DONE AND SUBMITTED this 11th day of July, 1995, in Chambers, West Palm Beach in the Northern Division of the Southern District of Florida.

ANN E. VITUNAC
United States Magistrate Judge